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**Local 225, United Security Guards of America (Planned Building Services, Inc.) and Local 32B-32J, Service Employees International Union.<sup>1</sup> Case 2-CB-18738-1**

August 26, 2005

**DECISION AND ORDER**

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN  
AND SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed on March 6, 2002, by Local 32B-32J, Service Employees International Union (Local 32B-32J) against Local 225, United Security Guards of America (the Respondent) and upon charges filed by Local 32B-32J against Planned Building Services, Inc. (PBS), an Order consolidating cases, consolidated complaint, and notice of hearing issued on May 31, 2002, alleging, in pertinent part, that the Respondent had engaged in unfair labor practices in violation of Section 8(b)(1)(A) and (2) of the Act. The Respondent failed to file an answer.<sup>2</sup>

The consolidated complaint was subsequently twice amended based upon additional charges filed by Local 32B-32J against PBS and Local 116, Production and Maintenance Employees Union (Local 116). However, the substance of the allegations against the Respondent remained unchanged. The Respondent did not file an answer to either of the amended consolidated complaints.<sup>3</sup> On April 22, 2005, the Regional Director for

Region 2 issued an Order severing cases, specifically severing the instant case involving the Respondent (Case 2-CB-18738-1) from Cases 2-CA-33687-1, 2-CA-34430-1, 2-CA-34431-1, 2-CA-34713-1, 2-CB-18922-1, and 2-CA-35577-1, which allege unfair labor practices by PBS and Local 116.<sup>4</sup>

On May 16, 2005, the General Counsel filed with the Board a Motion for Default Judgment and memorandum in support. On May 25, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the Region affirmatively advised the Respondent by letters dated June 17, 2002, and April 15 and 27, 2004, that all the allegations in the complaint would be considered admitted unless the Respondent filed a timely answer.

In the absence of good cause being shown for the failure to file an answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, PBS, a corporation with an office and place of business located at 167 Fairfield Road, Fairfield, New Jersey, has been engaged in providing cleaning and maintenance services at various commercial and residential buildings. Annually, in the course and conduct of its business operations described above, PBS performs services valued in excess of \$50,000 directly

<sup>1</sup> We have amended the caption to reflect the disaffiliation of the Service Employees International Union from the AFL-CIO effective July 25, 2005.

<sup>2</sup> The charge in Case 2-CB-18738-1 was initially served by regular mail on the Respondent, through its representative Gregg McCarthy, at 233 East Shore Road, Great Neck, New York 11023. The mail was returned to the Board undelivered. On April 15, 2002, McCarthy contacted the Region by telephone and stated that the Respondent's correct address was 100 Summit Drive, Manhasset, New York 11030. On April 16, 2002, a copy of the charge was mailed to McCarthy at the Manhasset address.

The consolidated complaint was initially served on the Respondent by regular mail at the Great Neck address. On June 18, 2002, the consolidated complaint, along with a letter advising that the General Counsel would seek summary judgment if no answer was timely filed, was served on the Respondent by certified mail at the Manhasset address.

<sup>3</sup> The General Counsel issued an Order amending consolidated complaint, amended consolidated complaint, and notice of hearing on March 26, 2003, and an Order further amending consolidated complaint, amended consolidated complaint, and notice of hearing on August 29, 2003. Initially, these documents were inadvertently sent to

Respondent's former address in Great Neck. Upon discovery of this error, the General Counsel served copies of these two orders, along with letters advising that, in the absence of a timely answer, all allegations would be considered admitted under Sec. 102.20 of the Board's Rules and Regulations, by certified mail on Respondent at the correct Manhasset address on April 15 and April 27, 2004. The Order further amending consolidated complaint was returned unclaimed. It is well established that the failure or refusal to accept certified mail or to provide for proper service cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB 247 (2003); *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

<sup>4</sup> The findings of fact and conclusions of law that are issued herein are not binding upon PBS and Local 116, and we do not pass on the potential joint and several liability of PBS for any unfair labor practices committed by the Respondent. See e.g., *Brisben Development, Inc.*, 344 NLRB No. 46, slip op. 1 fn. 1 (2005); *B/E Aerospace*, 323 NLRB 604 fn. 3 (1997).

for enterprises located outside the State of New Jersey. We find that PBS is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times, Local 32B–32J and the Respondent have been labor organizations within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Gregg McCarthy has held the position of president and has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of PBS (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time building service employees employed by PBS at 1995 Broadway, New York, New York, excluding all office clerical employees, guards and supervisors as defined in the Act.

On October 6, 2000, a valid petition was filed in Case 2–RC–22295, seeking an election among the unit employees, which unit includes the concierge/watchmen employed at 1995 Broadway.

On or about December 18, 2000, Local 32B–32J was certified as the exclusive collective-bargaining representative of the unit. At all material times since December 18, 2000, based on Section 9(a) of the Act, Local 32B–32J has been the exclusive collective-bargaining representative of the unit.

During the pendency of Case 2–RC–22295, on or about December 6, 2000, the Respondent obtained recognition from PBS and entered into a collective-bargaining agreement with it as the exclusive representative, for the purpose of collective-bargaining, for a bargaining unit of all full-time and regular part-time watchmen employed at 1995 Broadway, New York, New York. This collective-bargaining agreement was effective from December 6, 2000, through December 5, 2003.

The collective-bargaining agreement between PBS and the Respondent contains union security and dues checkoff provisions in articles II and III respectively. PBS and the Respondent have maintained and enforced the terms of the collective-bargaining agreement, including the union security and dues checkoff provisions.

Since on or about December 6, 2000, PBS has deducted sums of money as union dues, initiation fees, and assessments from wages of employees in the unit pursuant to its collective-bargaining agreement with the Respondent, and has remitted that money to the Respondent.

The Respondent obtained recognition and a contract from PBS at a time when PBS was not privileged to ex-

tend recognition and grant a contract because of the then-pending valid petition for an election described above. Moreover, that conduct continued notwithstanding PBS' obligation, as of December 18, 2000, to recognize and bargain with Local 32B–32J as the certified collective-bargaining representative of the unit.

Since in or about March 2001, PBS and Local 32B–32J have been negotiating for an initial collective-bargaining agreement. Local 32B–32J did not know, nor did it have reason to know, until a December 18, 2001 bargaining session with PBS, that PBS had recognized the Respondent and entered into a collective-bargaining agreement with it on or about December 6, 2000.

Since on or about March 6, 2001, PBS has failed and refused to recognize 32B–32J as the collective-bargaining representative for its concierge/watchmen and has failed and refused to bargain with Local 32B–32J concerning this classification. The concierge/watchmen are included in the unit described above.

## CONCLUSIONS OF LAW

1. By obtaining recognition from PBS and entering into a collective-bargaining agreement with it even though a valid petition had been filed seeking an election among the unit employees, and by maintaining and enforcing union security and checkoff provisions of its collective-bargaining agreement with PBS, the Respondent has restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(b)(1)(A) of the Act.

2. By accepting union dues, initiation fees, and assessments deducted from employees' wages and remitted by PBS pursuant to the collective-bargaining agreement, the Respondent has restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(b)(1)(A) of the Act, and has violated Section 8(b)(2) of the Act by attempting to cause PBS to discriminate against employees in violation of Section 8(a)(3) of the Act.

3. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(b)(1)(A) and (2) of the Act by obtaining recognition from PBS and entering into, maintaining, and enforcing a collective-bargaining agreement with PBS, which includes union-security and checkoff provisions, we shall

order the Respondent to reimburse watchmen employees for all union dues, initiation fees, or assessments obtained pursuant to the union-security provisions of the collective-bargaining agreement, with interest as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

### ORDER

The National Labor Relations Board orders that the Respondent, Local 225, United Security Guards of America, Manhasset, New York, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Acting as the collective-bargaining representative of the watchmen employees employed by Planned Building Services, Inc. (PBS) at 1995 Broadway, New York, New York, unless and until Local 225 is certified by the Board as the exclusive representative of those employees.

(b) Entering into, maintaining, or enforcing any collective-bargaining agreement between it and PBS covering the watchmen employees described above, unless and until it is certified by the Board as the exclusive representative of those employees.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Reimburse all present and former watchmen employees employed by PBS at 1995 Broadway, New York, New York, since December 6, 2000, for all union dues, initiation fees, or assessments that may have been paid or withheld from their pay pursuant to the union-security provisions of the collective-bargaining agreement between the Respondent and PBS effective from December 6, 2000, through December 5, 2003, with interest as provided for in the remedy section of this decision.

(b) Preserve and, within 14 days of a request or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its union offices in Manhasset, New York, copies of the attached notice marked "Appendix."<sup>5</sup> Copies of the no-

tice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Sign and return to the Regional Director sufficient copies of the notice for posting by PBS, if willing, at all places where notices to employees are customarily posted.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 26, 2005

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| Robert J. Battista, | Chairman |
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| Wilma B. Liebman, | Member |
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| Peter C. Schaumber, | Member |
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(SEAL) NATIONAL LABOR RELATIONS BOARD

### APPENDIX

#### NOTICE TO EMPLOYEES

#### POSTED BY ORDER OF THE

#### NATIONAL LABOR RELATIONS BOARD

#### An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

<sup>5</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the Na-

tional Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT act as the collective-bargaining representative of the watchmen employees employed by Planned Building Services, Inc. (PBS), at 1995 Broadway, New York, New York, unless and until we have been certified by the Board as the exclusive representative of those employees.

WE WILL NOT enter into, maintain, or enforce any collective-bargaining agreement between us and PBS covering the watchmen employees described above, unless and until we are certified by the Board as the exclusive representative of those employees.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL reimburse all present and former watchmen employees employed by Planned Building Services, Inc. (PBS), at 1995 Broadway, New York, New York, since December 6, 2000, for all union dues, initiation fees, or assessments that may have been paid or withheld from their pay pursuant to the union-security provisions of the collective-bargaining agreement between us and PBS effective from December 6, 2000, through December 5, 2003, with interest.

LOCAL 225, UNITED SECURITY GUARDS OF  
AMERICA